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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

IRMA T.,

Petitioner,

v.

THE SUPERIOR COURT OF THE  
COUNTY OF SAN BERNARDINO,

Respondent;

SAN BERNARDINO COUNTY  
DEPARTMENT OF CHILDREN'S  
SERVICES,

Real Party in Interest.

E036312

(Super.Ct.Nos. J-181741, J-181742  
& J-181743)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary write. A. Rex Victor,  
Judge. Petition denied.

Alvarenga & Drake and William E. Drake for Petitioner.

No appearance for Respondent.

Ronald D. Reitz, County Counsel, and Phebe W. Chu, Deputy County Counsel,  
for Real Party in Interest.

## 1. Introduction

In this petition for extraordinary writ under California Rules of Court, rule 39.1B, Irma T. (mother) challenges the juvenile court's order terminating her reunification services.<sup>1</sup> Mother claims that insufficient evidence supported the juvenile court's findings and orders to sustain the supplemental petition under section 387 and to set the selection and implementation hearing under section 366.26. Substantial evidence, however, supports the court's findings and orders. We therefore deny mother's petition.

## 2. Factual and Procedural History

On April 16, 2002, paramedics, police officers, and a social worker were called to mother's residence, where mother was in labor with her fifth child. Mother was unconscious with a blood alcohol level of .28. Mother also tested positive for methamphetamine and cocaine. After observing the residence and the children's physical condition, the social worker noted that the other children had been neglected and deprived of certain basic needs, including food, clothing, medical care, and a clean and sanitary living environment. The children were taken into protective custody and placed in foster care.

On April 18, 2002, the San Bernardino County Department of Children's Services (DCS) filed a petition under section 300, subdivisions (b) and (g), on behalf of mother's

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<sup>1</sup> All further statutory references will be to the Welfare and Institutions Code unless otherwise stated.

children, including Jose N. (age seven), Jonathan N. (age four), and Luis M. (age one).<sup>2</sup> In addition to the allegations of mother's neglect and drug abuse, DCS also alleged that the fathers' whereabouts were unknown. The court ordered all four children detained under the petition.

At the jurisdictional and dispositional hearing on May 16, 2002, the court found the allegations true. The court ordered mother to participate in her reunification plan, which included random drug tests.

By the sixth month review hearing, mother had completed a residential substance abuse program and a parenting course. Mother also tested negative for drugs, except on one occasion.

During the following six months, mother continued making progress in her reunification plan. Mother also consistently tested negative during her random drug tests. On June 6, 2003, the court authorized DCS to place the children with mother under a family maintenance plan. The parties agreed to return Jonathan and Jose immediately and return Luis at some later date. DCS returned Luis to mother on September 3, 2003.

After mother left her father's home in November of 2003, she became increasingly dependent on various services for her basic needs. After living in motels and other temporary locations, mother moved into a Lewis Foundation home in April of 2004. In addition to rent, mother also received aid for food and medical care.

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<sup>2</sup> Although the record indicates that mother also had two daughters, Crystal T. (age 8) and her newborn Rosie M., we will limit our discussion to her three sons who are the subjects of this appeal.

By May of the same year, the new social worker began to notice problems with mother's drug tests. Although mother was asked to test in February and March, the social worker found no documentation of the tests in mother's file. Also, the social worker twice required mother to drug test in May, but mother failed to test both times. Mother's drug tests in June also were suspicious.

The other residents at the Lewis Foundation alleged that mother either gave or offered them drugs. The daughter of a former resident also accused mother of using drugs on one occasion.

On June 9, 2004, DCS filed a supplemental petition under section 387 to remove the children from mother's custody. DCS alleged that mother had a substance abuse problem that severely impaired her ability to parent her children. The court continued the children's placement out of mother's custody under the supplemental petition.

During the jurisdictional and dispositional hearing on the supplemental petition, the court found the substance abuse allegation true. The court also found by clear and convincing evidence that the return of the children to mother's custody would create a substantial risk of detriment to the children's welfare. The court terminated reunification services and set the matter for a hearing under section 366.26.

### 3. Supplemental Petition

Mother claims that insufficient evidence supported the court's decision to sustain the substance abuse allegation in the supplemental petition.

When DCS seeks to remove a child by filing a supplemental petition, the same standard applies as with a removal under an original petition. (*Kimberly R. v. Superior*

*Court* (2002) 96 Cal.App.4th 1067, 1077.) Under section 361, subdivision (c), the court must find by clear and convincing evidence that the children are at risk of substantial danger if left in mother's custody. (*Kimberly R.*, at p. 1077.) The role of the reviewing court is limited to determining whether substantial evidence—i.e., evidence that is reasonable, credible, and of solid value—supports the court's finding. (*Id.* at p. 1078.) The reviewing court does not reweigh the evidence or reevaluate the credibility of the evidence. Even if the evidence supports a contrary finding, the reviewing court must uphold the juvenile court's finding if supported by substantial evidence and the reasonable inferences drawn from that evidence. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 947.)

We conclude that substantial evidence supports the court's finding that mother continued to have a substance abuse problem that severely impaired her ability to parent her children. The facts in this case demonstrate mother's inability to parent her children while under the influence of alcohol or drugs. The original petition was filed when mother was found unconscious while her three boys were standing outside crying, filthy, and in poor physical condition. The children were without adequate food, shelter, clothing, and medical care.

Although the children were returned to mother after she had made significant progress in her treatment plan, the record provides substantial evidence that mother had reverted back to her drug habit. In May of 2004, the social worker twice asked mother to drug test as required under her treatment plan. Mother failed to comply both times. During one occasion, mother went to the medical clinic and provided an inadequate

sample. She went to the restroom, took longer than usual, and returned with a small amount of cold urine. When she was asked to provide another sample within the accepted temperature range, mother refused. In the following month, although mother submitted two urine samples, the results did not engender confidence in mother's claim to sobriety. One sample tested positive for codeine, although mother was not taking any prescription drugs. The other sample was provided by a blond woman, while mother has dark hair and does not own a wig. The record shows that, since February of 2004, mother has failed to provide a clean drug test. From this evidence, the court reasonably inferred that mother continued to use drugs.

Additionally, the other residents who lived with mother at the Lewis Foundation home accused mother of offering or giving them drugs. A daughter of a former resident stated that mother had used drugs with that resident. Patricia Brown, the case manager at the Lewis Foundation, testified that mother had admitted using methamphetamine while in the program. Brown also testified that she had received telephone calls from the women expressing their desire to move out of the home they shared with mother because she had provided them with drugs. Brown, however, was unable to confirm the accusations. While these accusations may be inadequate in and of themselves, when combined with mother's failure to provide a clean drug test, they substantiate the juvenile court's finding that mother had relapsed into drug use. Although mother questioned the credibility of her former housemates, provided excuses for her drug tests, and denied any drug use, the juvenile court found mother to be a liar. The court observed that, "mother not only is continuing to use, but essentially bragging about it to other people in the

Lewis Foundation home and seeking to provide drugs to them. It does place not only these children at risk but the . . . other children of the other mothers in the home at risk.”

Based on mother’s history of drug use and her current relapse, the court reasonably inferred that mother’s substance abuse problem placed the children at risk of serious danger. Despite her efforts to argue otherwise, mother’s situation cannot be compared with a parent who simply keeps a messy house. (See *In re Paul E.* (1995) 39 Cal.App.4th 996.) Mother’s case also did not involve an isolated incident in the past. (See *In re Nicholas B.* (2001) 88 Cal.App.4th 1126.) The above evidence supports the court’s finding that mother currently has a substance abuse problem. Moreover, mother’s substance abuse compromises her ability to provide her children with adequate care and supervision. (See, generally, *In re Stephen W.* (1990) 221 Cal.App.3d 629; *In re Ashley G.* (1988) 205 Cal.App.3d 1235.)

We conclude that substantial evidence supports the court’s finding that mother had a substance abuse problem that severely impaired her ability to parent her children. The court, therefore, properly sustained the supplemental petition and removed the children from mother’s custody.

#### 4. Detriment

Mother also claims that insufficient evidence supported the court’s finding of detriment under section 366.21, subdivision (f), or section 366.22, subdivision (a).

At the permanency review hearing, the court must order the return of the children to the parent unless the court finds, by a preponderance of the evidence, that returning the children into parental custody would create a substantial risk of detriment to the safety,

protection, or emotional or physical well-being of the children. DCS bears the burden of establishing detriment. (§§ 366.21, subd. (f), & 366.22, subd. (a).) In determining detriment, the court must consider whether the parent participated regularly, made progress, and cooperated or availed herself of the services provided in the court-ordered treatment plan. (*Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, 1748.)

In reviewing the juvenile court's rulings, we consider the entire record, resolving all conflicts in favor of upholding the ruling, to determine whether it contains substantial evidence. (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 705; *In re John V.* (1992) 5 Cal.App.4th 1201, 1212.) If supported by substantial evidence, the court's ruling will not be disturbed on appeal absent a clear showing that the court exercised its discretion in an arbitrary, capricious, or patently absurd manner. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319; *Constance K.*, at p. 705.)

Substantial evidence supports the court's finding that, while mother had moved several steps forward in her court-ordered treatment plan, she had taken a huge step backward in the months preceding the July 26, 2004, hearing. Contrary to mother's claim, this is not one of those difficult cases where the parent has complied with her treatment plan. (See *Blanca P.*, *supra*, 45 Cal.App.4th at p. 1748.) Instead, in this case, there has been a clear failure by mother to fulfill one of the most critical components of her treatment plan, namely, living free from drug dependency and complying with all the required drug tests. As discussed in the previous section, substantial evidence supported the court's finding that mother had relapsed into drug use.



At the July 26, 2004, hearing, mother testified that, “my case was going to be over one day before she picked up my kids. And I did all my program and I deserve . . . another chance with my kids because I showed them the first time. So one day before my case was going to be over all . . . these rumors started coming on.” Mother’s comment sounds reminiscent of an earlier case before this court, where the parents relapsed into drug use a few days before their case was “supposed to close.” (*In re N.M.* (2003) 108 Cal.App.4th 845, 856.) In that case, we noted that the parents’ “relapse strongly suggest deliberate and conscious behavior of individuals who thought the coast was clear to start using drugs again because the dependency was over, not a momentary lapse by persons who had truly reformed.” (*Id.* at p. 857.) The court’s findings in this case of mother’s brazen conduct at the Lewis Foundation home likewise suggests that mother deliberately resumed her involvement with drugs shortly before the court had planned to terminate her case.

Even if mother’s relapse was unintentional, we can say, as we did in *In re N.M.*, that mother’s failure to test “showed, at the least, a blatant disregard for [her obligation] under the case plan to prove [her] abstinence from illegal drugs.” (*In re N.M., supra*, 108 Cal.App.4th at p. 857.) Because mother failed to complete this critical component of her treatment plan, the court reasonably found that the return of the children to mother’s custody would create a substantial risk of detriment.

We conclude that the trial court properly terminated family maintenance services and scheduled the section 366.26 hearing.

5. Disposition

We deny mother's petition.

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s/Gaut  
J.

We concur:

s/McKinster  
Acting P.J.

s/Richli  
J.